SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 338

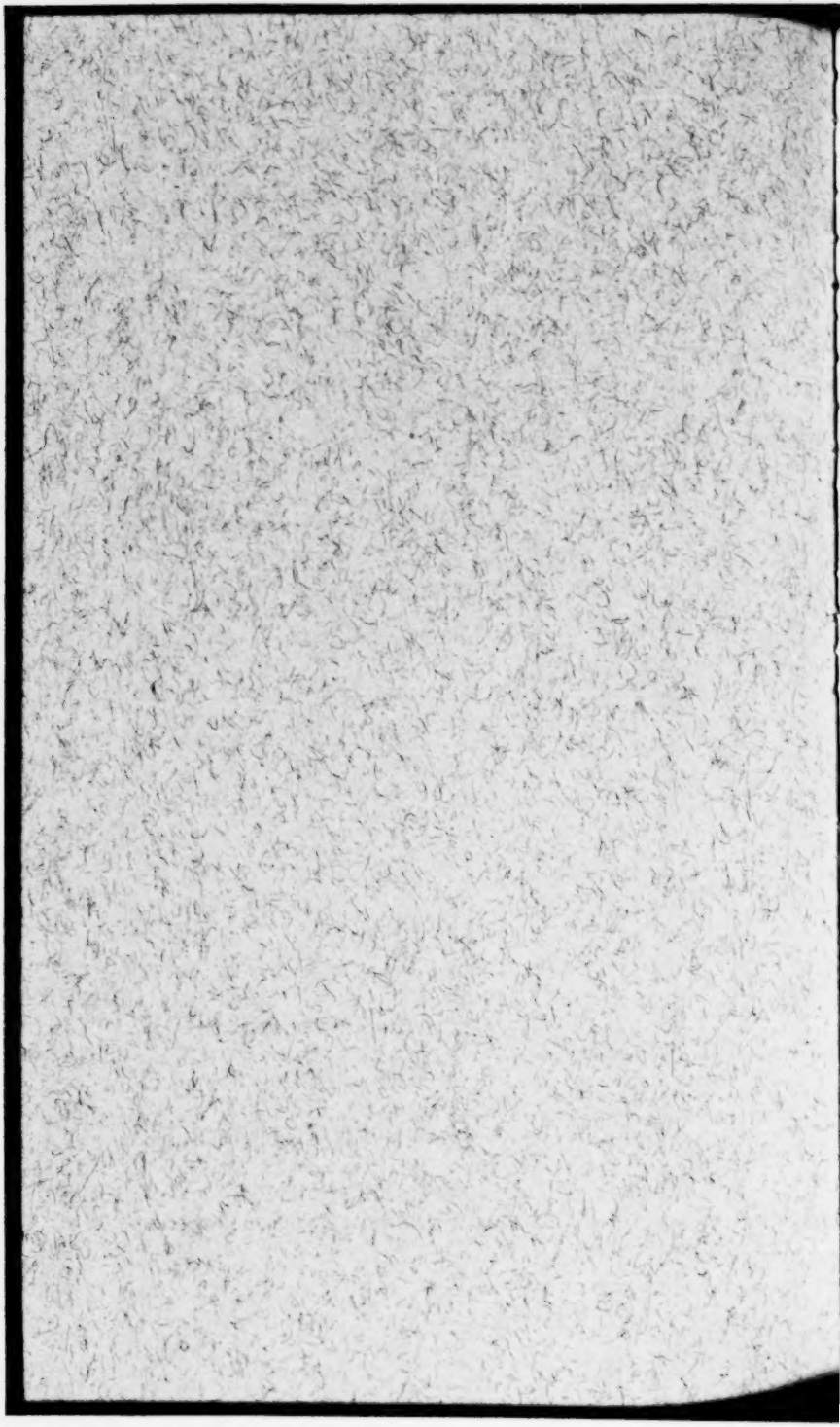
HAZEL E. McCLELLAND, ON BEHALF OF HERSELF AND ALL OTHER TAXPAYERS OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, OF THE SAME CLASS AND SIMILARLY SITUATED,
Petitioner,

vs.

THE BOARD OF SUPERVISORS, IN ITS CAPACITY AS THE BOARD OF EQUALIZATION OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, WHOSE MEMBERS ARE WILLIAM A. SMITH, LEONARD J. ROACH, JOHN ANSON FORD, RAYMOND V. DARBY AND ROGER W. JESSUP; AND JOHN R. QUINN, COUNTY ASSESSOR OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

JOHN W. PRESTON,
Counsel for Petitioner.



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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

To the Honorable Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner, Hazel E. McClelland, petitioner in the Court below, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of

California entered in the above-entitled cause on the 21st day of May, 1947. A petition for rehearing was filed by petitioner on the 4th day of June, 1947, and a rehearing was denied by said Court on the 19th day of June, 1947. The Supreme Court of the State of California is the highest Court in said State, and its judgment herein is final.

Opinions Below

The Supreme Court of the State of California rendered one opinion in the case, which is reported in 30 A. C. 119 (Advance California Reports) and in 180 Pac. (2d) 676.

Jurisdiction

The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended (28 U. S. C. A. Section 344).

The basis upon which petitioner contends that this Court has jurisdiction to review the judgment of the Supreme Court of California is, that the tax assessments approved by said judgment are discriminatory and violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Constitutional Provisions Involved

Involved herein are the provisions of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. The validity of the tax assessments involved herein was challenged in the protests filed and at every subsequent stage of the proceedings before the Board of Equalization and in the Court below on the ground that said assessments are discriminatory and void because in violation of the Equal Protection Clause of the Fourteenth Amendment.

The provisions of the Constitution of California involved are:

Article XIII, Section 1, which provides:

> "All property in the State except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. The word 'property', as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership * * *."

Article XI, Section 12, which provides *inter alia:*

> "All property subject to taxation shall be assessed for taxation at its full cash value."

Article XIII, Section 2, which provides:

> "Land, and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value."

Statutes Involved

The Statutes involved are:

Section 103 of the Revenue and Taxation Code of California provides:

> " 'Property' includes all matters and things, real, personal, and mixed, capable of private ownership."

Section 105 of said Code provides *inter alia:*

> " 'Improvements' includes:
>
> (a) All buildings, structures, fixtures, and fences erected on or affixed to the land, except telephone and telegraph lines."

Section 601 of said Code provides:

> "The assessor shall prepare an assessment roll, as directed by the board, in which shall be listed all property within the county which it is the assessor's duty to assess."

Section 602 of said Code provides, in part:

> "This local roll shall show: • • •
>
> (e) The cash value of real estate, except improvements.
>
> (f) The cash value of improvements on the real estate."

Section 110 of said Code provides, in part:

> " 'Value', 'full cash value', or 'cash value' means the amount at which property would be taken in payment of a just debt from a solvent debtor."

Summary Statement

Petitioner brought this original proceeding in the Supreme Court of the State of California to secure a review, by certiorari, of the order of the Board of Supervisors, sitting as the Board of Equalization, of the County of Los Angeles, State of California, denying the applications of petitioner and approximately seven hundred (700) other taxpayers of said County of the same class and similarly situated for reductions of the tax assessments against their respective real property improvements for the taxable year 1946, and for an order directing said Board to reconsider and equalize said assessments, to the end that said assessments should be made equal and uniform as compared with the assessment valuations for said year of other real property improvements in said County. The Supreme Court of California granted the writ of certiorari prayed for, and thereafter the Board of Equalization duly certified the

record of the proceedings had before it to said Court. The proceeding was heard by said Court upon said petition, the answer of respondents, the briefs of the parties, and argument of counsel; and said Court thereafter affirmed the order of said Board of Equalization.

The record shows that petitioner is the owner of a certain parcel of land in the City of Los Angeles, County of Los Angeles, State of California, upon which there is an apartment house which contains living quarters for forty-four (44) families, referred to in the record as a multiple unit dwelling improvement or structure. The other taxpayers, represented by the petitioner, are also the owners, respectively, of multiple unit dwelling structures upon lands situated in said county and state.

In the year 1940 the Assessor of Los Angeles County established valuations, for assessment purposes, of all real property improvements in said county, based upon unit cost of then current theoretical construction or reproduction of every building in the county less straight-line depreciation of 4% per annum on residential property. (R. 25-27.) No general revaluation of real property improvements in the County has been made since 1940. (R. 17, 20.) Assessment valuations of one-family dwelling improvements in the County has been made since 1940. (R. 25, 27.) 1946, inclusive. (R. 25, 27.) Assessment valuations of multiple unit dwelling improvements were generally the same from 1940 to 1945, inclusive. (R. 27-29.) But in 1946 the assessment valuations of multiple unit dwelling improvements were generally and substantially increased over the assessment valuations thereof in 1945 (R. 28), without any corresponding increase in the assessment valuations of one-family dwelling, commercial, and industrial improvements. (R. 67-68.) t

Within the time allowed by law, petitioner and said seven hundred (700) other taxpayers represented by her in this

proceeding filed written applications with said Board of Equalization for reductions in the assessments against their respective multiple unit dwelling improvements, upon the following principal grounds: (1) that the assessments against their real property improvements had not been equalized with the assessments of other real property improvements of the same class and similarly situated; (2) that the scheme employed in the assessment of multiple unit dwelling improvements to increase the same over the previous taxable year was applied principally, if not altogether, to multiple unit dwelling improvements, and was not applied to buildings or improvements generally, or to buildings of similar construction, nor to all buildings in similar use, in the County of Los Angeles; (3) that if any reason existed for the increased assessments against multiple unit dwelling improvements, the same reason had equal application to all other improvements in the County; (4) that the Assessor applied factors of valuation and depreciation to multiple unit dwelling improvements other than and different from the factors applied to other improvements of the same class in the County; and (5) that the assessments against the properties of, and represented by, the petitioner are discriminatory and void because they are in direct violation of Article XIII, Section 1, of the Constitution of the State of California and of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Other grounds for the invalidity of said assessments were also alleged in said applications.

The record shows that in 1946 there were more than six hundred and fifty thousand (650,000) single unit, that is, one-family, dwellings in Los Angeles County (R. 41, 67) and that these improvements comprised more than fifty per cent (50%) of the total taxable improvements in the county. (R. 41.) Multiple unit dwelling improve-

ments comprised only fourteen and two-tenths per cent (14.2%) of all dwelling improvements in the County. (R. 36.) Petitioner contended that the wilful conduct of the assessor in increasing, from 20% to 80%, the assessment valuations of multiple dwelling improvements and in failing and refusing to make proportionate, or any, increases in the assessment valuations of one-family dwelling improvements constituted discrimination prohibited by both the California and Federal Constitutions; and the same contention was made in respect to the assessor's failure to make proportionate increases in the assessment valuations of commercial and industrial improvements and also in respect to both improved and vacant lands in the County. (R. 41-42, 43-44.)

At the hearing of said applications before the respondent Board of Equalization, the Assessor and the Assistant and Deputy Assessors made the following pertinent and decisive admissions:

(1) That in 1946 the assessment valuations of multiple unit dwelling improvements were generally and substantially increased over the valuations for the 1940-1945 period (R. 28).

(2) That no similar or other increases were made in 1946 in the assessment valuations of single unit dwelling improvements over the 1940-1945 period (R. 67).

(3) That multiple unit and single unit dwelling improvements belong to the same classification (R. 29), being constructed of the same materials and by the same labor purchased in the same market (R. 68, 69).

(4) That in 1946, and prior thereto, inflation existed and had caused general increases in the market price of practically all lands and improvements in Los Angeles County (R. 21, 22).

(5) That in respect to the 650,000 single unit dwellings in the County, the market price thereof had increased in and prior to 1946 as much as the market price of multiple unit dwellings (R. 67, 68, 59, 60).

(6) That no increases, in general, were made in the assessment valuations of land in the county (R. 43, 44).

(7) That the principal factors considered in the higher assessment valuations of multiple unit dwelling improvements in 1946 were: income, costs of materials, costs of labor, replacement cost, prices being paid for properties offered for sale, influx of people into the area, higher occupancy, and the fact that repairs were not demanded (R. 31, 32).

(8) In their answer below, the respondents also made the following admission: "Admit that the Assessor deliberately and intentionally, but deny that he arbitrarily, refused and refrained from making any increase for tax purposes of the improvements located upon such single unit dwelling lots * * *" and "that a substantial part of the real property, including most single family dwelling improvements, had increased in price but had not increased in value due to the fact that such increases in prices represented a bonus or premium paid by purchasers for shelter * * *" (R. 15, 13).

In this connection the Assessor admitted that he informed apartment owners in 1946: "I told them I was going to raise property in Los Angeles County as a general thing, because I thougth the market had increased." (R. 94.)

The Assessor, while admitting that the market price of single unit dwellings had increased, in general, about one hundred fifty percent (150%) by 1946, defended his failure and refusal to increase the assessment valuations thereof

upon the ground that such increase in market price represented a so-called "bonus for occupancy" which homebuyers were willing to pay for shelter. The Assistant Assessor testified in this connection, as follows:

> "The Assessor • • • did not increase the value of the improvements on single family residences because in his opinion there was not sufficient evidence as of the first Monday of March, 1946, to justify such an increase. The Assessor was of the opinion that the sales prices of single family residences were not reflective of market value but that such prices contained within them a bonus for occupancy which in many instances was as much as sixty per cent of the sales price. (R., 60.) • • • I mean that you have to deduct 60% of the sales price to get down to the market value" (R. 60).
>
> "With respect to single family residences, the Assessor came to the conclusion that the bonus for occupancy, while it constituted a part of the sales price, did not represent market value and so the Assessor did not attempt to reflect such bonus for occupancy in the assessed valuation placed upon single family homes for the year 1946." (R. 60.)

In respect to the increases in the assessments against multiple dwelling property improvements for 1946, the Assistant Assessor testified:

> "On the contrary, the Assessor in fixing the values of the petitioners herein • • • used the method set forth in detail in Exhibit A (the Hartman affidavit) and took into consideration in the fixing of the assessed valuation the sales prices of such properties, the rentals, the percentage of occupancy and a multitude of such other factors as would normally be considered by a willing buyer and a willing seller. The Assessor was confronted with the fact that in the purchase of income properties capital was seeking the highest possible return with the least amount of risk, and

such sales as there were, therefore, in the opinion of the Assessor, did not contain any bonus for occupancy but represented market value and constituted an index for the determination of market value." (R. 61.)

Holding of the Court Below

The court below held that petitioner was not entitled to the relief sought, saying *inter alia:*

> "Unquestionably the record of proceedings before the board reflects substantial evidence which tends to support the claims (of unlawful discrimination) of petitioner and of those whom she represents, but by reason of the material and extensive conflicts which we have reviewed we feel bound to conclude that the right to the annulling action of certiorari has not been established." (180 Pac. 2d 684.)

As shown by the petition for a rehearing in said court, there were no "material and extensive conflicts" in the evidence in regard to the unlawful discrimination in the assessment of multiple unit dwelling improvements. On the contrary, the pleadings and evidence of the respondents fully establish said discrimination.

Questions Involved

The principal questions involved are these:

1. May the taxing authority of Los Angeles County intentionally and deliberately tax the multiple unit dwelling improvements of petitioner and those represented by her upon a greater proportion of the market value thereof than other taxpayers are required to pay upon improvements on their properties of the same class without denying petitioner and those represented by her the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States?

2. May said taxing authority intentionally and deliberately tax the real property improvements of petitioner and those represented by her upon a greater proportion of the market value thereof than other taxpayers are required to pay upon their real property improvements of the same class without violating the provisions of Article XIII, Section 1, of the State of California requiring that "All (taxable) property in the State • • • shall be taxed in proportion to its value"?

Reasons Relied On for the Issuance of the Writ

I

Under the challenged assessments the complaining taxpayers are denied the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

It is well settled by the decisions of this Court that the complaining taxpayers have the constitutional right to be taxed upon no greater proportion of the market value of their real property improvements than other taxpayers of Los Angeles County are required to pay upon their real property improvements. (*Sioux City Bridge Company* v. *Dakota County,* 260 U. S. 441, 67 L. Ed. 340, 43 S. Ct. 190, 28 A. L. R. 979; *Greene* v. *Louisville & Interurban R. Co.,* 244 U. S. 499, 61 L. Ed. 1280, 37 S. Ct. 673; *Raymond* v. *Chicago Union Traction Co.,* 207 U. S. 20, 52 L. Ed. 78, 28 S. Ct. 7; *Louisville & N. R. Co.* v. *Greene,* 244 U. S. 522, 61 L. Ed. 1291, 37 S. Ct. 683; *Ill. Cent. R. Co.* v. *Greene,* 244 U. S. 555, 61 L. Ed. 1309, 37 S. Ct. 697; *Sunday Lake Iron Co.* v. *Wakefield Township,* 247 U. S. 350, 62 L. Ed. 1154, 38 S. Ct. 495; *Southern R. Co.* v. *Watts,* 260 U. S. 519, 67 L. Ed. 375, 43 S. Ct. 192; *Cumberland Coal Co.* v. *Board of Revision,* 284 U. S. 23, 76 L. Ed. 146, 52 S. Ct. 48; *Concordia*

Fire Ins. Co. v. *Illinois,* 292 U. S. 535, 78 L. Ed. 1411, 54 S. Ct. 830.)

The facts set forth in the summary statement show that the 1946 assessments of multiple unit dwelling improvements were increased from 20% to 80% over the 1945 assessments of said improvements (R. 37, 40), and that these increases were based upon the increases in the sales prices of such improvements. (R. 30, 60, 61.) It could not be otherwise, since these and all other improvements in the county had been valued for assessment in 1940 upon the basis of current costs of reproduction, less depreciation for the age of each improvement (R. 25, 26, 27), and no general revaluation had been made since then. (R. 25, 27.) Meanwhile, rentals were frozen under O.P.A. and, hence, income was the same, and could not affect assessable values. If sales prices reflected market values of multiple unit improvements, as claimed by the assessor, then obviously sales prices also reflected market values of single unit dwelling improvements. This being true, it was the duty of the assessor to assess both types of dwelling improvements at their "full cash value" (Art. XI, Section 12, Calif. Const.) and "in proportion to (the) value" of each. (Art. XIII, Section 1, Calif. Const.)

The terms "value," "full cash value," and "cash value" are defined in the Revenue and Taxation Code of California as meaning "the amount at which property would be taken in payment of a just debt from a solvent debtor." (Section 110, Rev. & Tax'n Code.) This Court has passed upon said Section (formerly Section 3617 of the Political Code), in *San Francisco National Bank* v. *Dodge,* 197 U. S. 70, 49 L. Ed. 669, 25 S. Ct. 384, involving the taxation of shares of stock, saying at page 79 (197 U. S.):

> "Under the law the shares of national banks must be valued at their 'full cash value,' which the statute defines to mean the amount at which they 'would be

> taken for a just debt due from a solvent debtor.' These words are but synonymous with the requirement that, in assessing shares of stock, their market value must be the criterion. * * * *it is apparent that the general market value of the stock is its true cash and selling value.*" (Italics ours.)

See also, *Los Angeles* v. *Western Oil Co.*, 161 Cal. 204; *Crocker* v. *Scott*, 149 Cal. 575; *Bank of Arizona* v. *Howe*, 293 Fed. 600; *State* v. *Virginia & T. R. Co.*, 23 Nev. 283, 46 Pac. 723, 35 L. R. A. 759—all to the same effect. As said in *State* v. *Virginia & T. R. Co., supra* (35 L. R. A. 760):

> "Wherever property has a well defined market value, which is usually the case with personal property, with town and farm property, the market value is usually the best criterion of its value for purposes of taxation. It is fair to presume that property to be taken in payment of a just debt from a solvent debtor would be appraised at what it is reasonably worth in the market —*at what it would probably bring.*" (Italics ours.)

But, notwithstanding the well known meaning of "full cash value" as being "market or selling value," the assessor "deliberately and intentionally * * * refused and refrained from making any increase for tax purposes of the improvements located upon such single unit dwelling lots" (R. 15), although he admits the market or sales price of such improvements had increased 150%. (R. 60.) Why? Because, he says, the increase in the market price of single unit improvements represented a "bonus for occupancy" which home-buyers were willing to pay. (R. 60.) These sales were not exceptional transactions. More than 78,000 such sales were analyzed. Moreover, the assessor said he was "going to raise property in Los Angeles County as a general thing, because I thought the market had increased." (R. 94.)

In effect, the assessor sub-divided dwelling improvements

into two classifications—one, multiple, and the other single, unit improvements. But this cannot lawfully be done, for, under the law, all improvements belong to one and the same classification. Section 105 of the Rev. and Tax'n. Code defines "improvements" as follows:

> "'Improvements' includes:
>
> "(a) All buildings, structures, fixtures, and fences erected on or affixed to the land, except telephone and telegraph lines."

Moreover, there is no natural distinction between improvements. The assessor may not, therefore, lawfully divide such improvements into different groups, and apply a standard of valuation to one group that he does not apply to the other, where to do so would result in one group being taxed upon a greater proportion of its market value than is the other. It is settled law that discrimination, prohibited by the Fourteenth Amendment, may arise as surely out of the undervaluation of the property of others as from overvaluation of the property assessed. (*Southern R. Co.* v. *Watts,* 260 U. S. 519, 67 L. Ed. 375, 43 S. Ct. 192; *Sunday Lake Iron Co.* v. *Wakefield Township,* 247 U. S. 350, 62 L. Ed. 1154, 38 S. Ct. 495; *Raymond* v. *Chicago Union F. Co.,* 207 U. S. 20, 52 L. Ed. 78, 28 S. Ct. 7; *Cumberland Coal Co.* v. *Board of Revision,* 284 U. S. 441, 445, 67 L. Ed. 340, 43 S. Ct. 190.) As said in the last cited case, at pages 28-29 (284 U. S.):

> "• • • the intentional, systematic undervaluation by state officials of taxable property of the same class belonging to others contravenes the constitutional right of one taxed upon the full value of his property. (Citing cases) • • • 'This Court holds that the right of the taxpayer whose property alone is assessed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which

> others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law."

There can be no doubt that the market prices of all dwelling improvements in Los Angeles County increased greatly during and following the recent World War. The market price of commercial and industrial improvements also increased during said period. The causes of those increases are immaterial,—it is the fact with which we are concerned —but if the causes can be material, they are stated by the assessor as follows:

> "The price of occupancy had increased tremendously. The cost of materials had increased tremendously. Occupancy was running better than 100%. Repairs were not demanded. There wasn't any economic problem there. Then the influx of people from the East and all over the world began here, and it became evident that the market that was here for property is exhibited by present prices being paid for those offered for sale that the value had increased tremendously." (R. 31.)

The assessor elsewhere in the record also stated that inflation existed during said period and had caused general increases in the market price of practically all lands and improvements in the county (R. 21, 22). Whether inflation existed is also immaterial.

The pertinent and controlling fact is, that the market price—which must be considered the cash or market value —of almost all improvements in the County had greatly increased before March 1, 1946; single unit improvements as much as 150%. (R. 60.) If the increase in the

market price of multiple unit improvements required and justified a 20% to 80% increase in the assessable valuation thereof, then the 150% increase in the market price of single unit improvements required a proportionate increase in the assessable valuation thereof. The assessor's intentional and deliberate failure and refusal to increase the assessable valuations of single unit improvements, under the facts of this case, was a denial of the equal protection of the law guaranteed by the Fourteenth Amendment.

II

The challenged assessments violate the provisions of the Constitution of California requiring that all taxable property in the State "shall be assessed for taxation at its full cash value" (Art. XI, Section 12) and "shall be taxed in proportion to its value" (Art. XIII, Section 1).

The Constitution of California provides that "All property subject to taxation shall be assessed for taxation at its full cash value" (Article XI, Section 12), and that "All property in the State except as in this Constitution provided, * * * shall be taxed in proportion to its value" (Article XIII, Section 1). These provisions of the Constitution have been construed by many decisions of the Supreme Court of California.

It has long been settled law in California that uniformity and equality in the taxation of property is required by the Constitution of the State. (*Nongues* v. *Douglass,* 7 Cal. 65; *People* v. *Burr,* 13 Cal. 343; *People* v. *Brooks,* 16 Cal. 11; *Beals* v. *Board of Supervisors,* 35 Cal. 624; *In re Richardson,* 170 Cal. 68, 73; *Pac. Coast S. S. Co.* v. *Richardson,* 186 Cal. 70; *Birch* v. *County of Orange,* 186 Cal. 736; *Mahoney* v. *County of San Diego,* 198 Cal. 388; *People* v. *Richfield Oil Co.,* 204 Cal. 301, 303.)

It is also well settled that equality in assessments is a prerequisite to securing uniformity and equality in taxation. (*Los Angeles Gas & E. Co.* v. *County of Los Angeles,* 162 Cal. 164, 168; *Sou. Pac. Land Co.* v. *San Diego County,* 183 Cal. 543, 546; *Mahoney* v. *City of San Diego,* 198 Cal. 388.) The principle followed in these and other California cases is stated in *Judson on Taxation,* at page 608 as follows:

> "• • • it is obvious that where taxation is upon property that requires valuation, inequality of taxation is produced as surely by inequality of valuation as by inequality of the rate of tax."

In this connection the Supreme Court of California, in *County of San Bernardino* v. *Way,* 18 Cal. (2d)647, said, at pp. 657-658:

> "It is the purpose of uniformity of taxation that all property in the State carry its fair burden and contribute its just amount in taxation to the support of the various public bodies which levy taxes • • • The equality guaranteed (by the Constitution) is equality under the same conditions, and among persons similarly situated."

Obviously, owners of all dwelling improvements, whether multiple or single unit, are similarly situated in fact, as well as in law. As already noted, ante, "improvements" are defined by statute to include "*all buildings, structures,* fixtures, and fences erected on or affixed to land, except telephone and telegraph lines." (Sec. 110, Rev. and Tax'n Code; italics ours.) It is a fact that in 1940 about 43% of single unit improvements were rented in competition with multiple unit improvements (R. 36, 37), and the assessor admits that both single and multiple unit improvements belong to the same classification. (R. 29, 69.)

The California courts have held in numerous decisions that, for assessment and taxation purposes, the terms

"value" and "full cash value", as used in the Constitution, mean "market value." (See, also, Sec. 110, Rev. and Tax'n Code).

In *Crocker* v. *Scott,* 149 Cal. 575, the Court said, at page 585:

> "As was said in the majority opinion in the Dodge case (S. F. Nat'l Bk. *v.* Dodge, 197 U. S. 70), the words 'market value' are, and as here used were, but synonymous with the terms 'value' and 'full cash value', defined in Section 3716 (of Political Code, now Sec. 110 of Rev. and Tax'n Code) * * *".

In *Los Angeles* v. *Western Union Oil Co.,* 161 Cal. 204, the taxpayer contended that the assessor erred in assessing its shares of stock at the market value thereof as shown by sales on the stock exchange of Los Angeles on a certain date. The Court held there was no error in so doing, saying at page 207 (*Id.*):

> "The assessor took the market value of the stock on a given day *and that market value is synonymous with 'value' and 'full cash value' defined by Section 3617 of the Political Code"* (now Sec. 110 of Rev. and Tax'n Code)." (Italics ours)

Nothing could be clearer than that the Court thus held that market selling price is market value, the constitutional criterion for establishing assessable valuations.

If it be contended that the assessor should not, as to single unit improvements, have increased the assessable valuation thereof because of alleged abnormal and inflationary conditions existing in the Los Angeles area, then for precisely the same reason the assessable valuation of multiple unit improvements should not have been increased. Such conditions had affected alike practically all improvements and lands in the county. (R. 21, 22.) The equality guaranteed by the State as well as by the Federal Constitution re-

quired that, under the same conditions and among persons similarly situated, all these improvements be assessed and taxed on the same basis, that is, at the "full cash value" thereof and "in proportion" to such value. Failure to do so, caused disproportionate assessments and heavier tax burdens to be laid upon multiple unit improvements than were laid upon single unit dwelling, commercial and industrial improvements. Such assessments are condemned by many California decisions.

In *Pacific Coast S. S. Co.* v. *Richardson,* 186 Cal. 70, the Supreme Court said at page 72:

> "An assessment grossly disproportionate as compared with other assessments is an excessive assessment, since the final object of the assessment is to distribute the tax ratably on the various parcels of property subject to it, and an unequal assessment on one parcel as compared with others means that an excessive portion of the tax falls on that parcel."

To the same effect are: *In re Richardson,* 170 Cal. 68, 73; *Birch* v. *County of Orange,* 186 Cal. 736; *Mahoney* v. *County of San Diego,* 198 Cal. 388; *People* v. *Richfield Oil Co.,* 204 Cal. 301, 303; *Los Angeles Gas & E. Co.* v. *County of Los Angeles,* 162 Cal. 164, 168; *Southern Pac. Land Co.* v. *San Diego County,* 183 Cal. 543, 546.

Under the law, *supra,* it was the duty of the assessor on the first day of March, 1946, to assess all structures and improvements in the county uniformly and without discrimination. This was done in the year 1940, and in subsequent years until 1946 upon the basis of the 1940 valuations.

However, in 1946 the assessor revalued only multiple dwellings, hotels, and a token revaluation of a few office buildings in the County. More than 650,000 single unit dwelling structures and practically all commercial and in-

dustrial structures were intentionally and deliberately allowed to remain on the 1940 revaluation basis.

Multiple dwelling improvements were revalued in 1946 by the use, mainly, of three factors: (1) 1946 sales prices of such improvements; (2) reproduction thereof on the basis of 1946 market prices for materials and labor; and (3) by the employment of a reducing balance formula instead of a straight-line formula of depreciation.

Uniformity and equality under the law required that the assessor do one of two things: (1) allow all structures to remain on the 1940 revaluation basis; or (2) apply the same factors, used in the revaluation of multiple unit improvements, to all improvements in the County. He did not do this, and his failure to do so has resulted in imposing upon multiple unit improvement owners a proportionally greater tax burden in 1946 than is borne by the owners of other improvements in the County.

There is no material conflict in the evidence as to the discrimination thus practiced by the assessor. He stands convicted thereof by the pleadings and by his own testimony as shown in the petition for a rehearing in the court below. Moreover, petitioner offered evidence to the Board of Equalization, at the hearing, that the assessor was then engaged in the revaluation of single unit dwelling, commercial and industrial improvements in the County, which the Board refused to admit. (R. 96-98.) This proffered evidence would have shown the falsity and hypocrisy of the assessor's claim that the increase in the market price of single unit dwelling improvements represented a "bonus for occupancy."

Since none of the 1946 assessments made on the 1940 revaluation basis can now be changed, the only way that justice can be done to petitioners is to require the taxing authority of Los Angeles County to reduce their assess-

ments so that the same may be equalized and made uniform with the assessments of other improvements in the County.

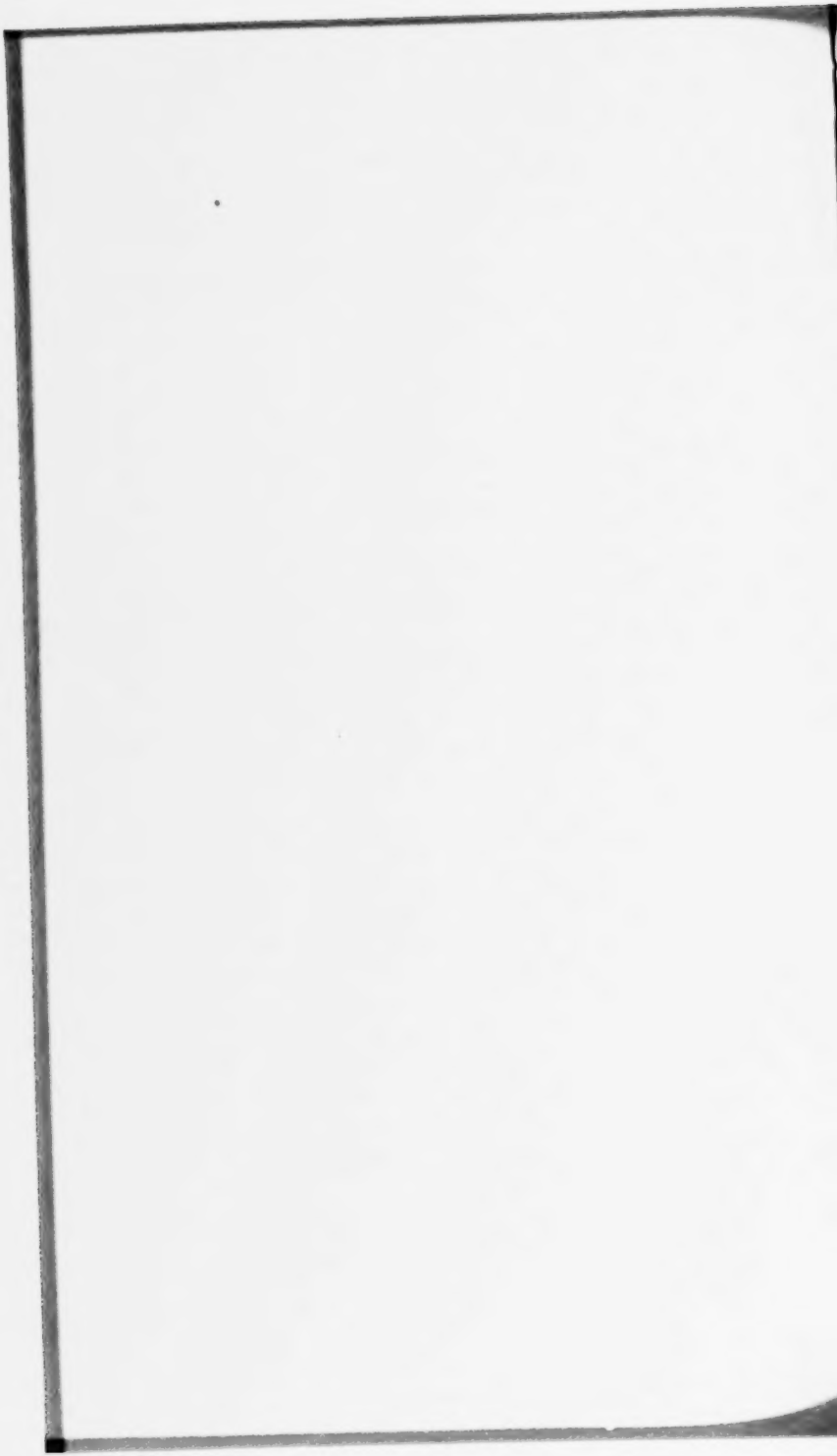
Your petitioner presents to this Court and files herewith a duly certified transcript of the entire record of the case, as the same appears in the Supreme Court of the State of California.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court to the Supreme Court of the State of California, to the end that the judgment of said Supreme Court of California herein complained of may be reviewed by this Honorable Court.

HAZEL E. MCCLELLAND,
Petitioner.

By JOHN W. PRESTON,
Attorney for Petitioner.

(2487)



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IN THE

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United States

OCTOBER TERM, 1947

No. 338

HAZEL E. McCLELLAND, on behalf of Herself and all other Taxpayers of the County of Los Angeles, State of California, of the same class and similarly situated,

Petitioner,

vs.

THE BOARD OF SUPERVISORS, in its capacity as the BOARD OF EQUALIZATION of the County of Los Angeles, State of California, Etc., et al,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

A.

STATEMENT OF FACTS

This case involves the equalization of assessed values for taxation purposes. The properties represented by petitioners are mainly multiple dwellings,

i.e., apartment houses and hotels. The comparison properties are single family dwellings.

Petitioners have not contended that the subject properties are assessed in excess of 50% of market value (which is the level of assessment commonly used in California). The petitioners' contention has been that the other properties, the single family dwellings, were assessed at less than 50% of market value thereby placing a greater proportion of the tax burden upon multiple dwellings.

Respondents have conceded at all times that if that be the fact then the assessments would be non-uniform, discriminatory and erroneous. But respondents have contended throughout that the facts do not support petitioners' concededly correct legal premise.

The matter was first heard by the County Board of Equalization (which under California law is a quasi-judicial body). Upon conflicting evidence that board held that the properties were already equalized and denied the applications for reduction.

Petitioners sought and obtained a review by certiorari from the State Supreme Court. That court reviewed the conflicting evidence, both that tending to support petitioners (R. 105-108) and that tending to support respondents (R. 108-111) and concluded that while there was a conflict there was substantial evidence to support respondents. The California Supreme Court stated in its opinion:

" . . . However we are satisfied that, as hereinafter appears more fully, upon any view as to the scope of this proceeding petitioner has not established that the evidence before the board of equalization was insufficient to support its determination as to the correctness and legality of the disputed assessments; nor, upon any view of the scope of certiorari, is the showing here sufficient to authorize annulment of the board's order for any vice in its own procedure." (R. 104.)

And also:

"Unquestionably the record of proceedings before the board reflects substantial evidence which tends to support the claims of petitioner and of those whom she represents, but by reason of this material and extensive conflicts which we have reviewed we feel bound to conclude that the right to the annulling action of certiorari has not been established." (R. 112.)

The case was thus decided on the facts and the basic question of law was not decided by the California Supreme Court contrary to the contention of petitioner. The major portion of the opinion is a summary and analysis of the facts. The court did recite briefly the applicable legal principles (R. 102-104) as to which there has been no dispute. A comparison of those legal principles with what petitioners now assert to be the correct legal principles (Pet., pp. 11 et seq.) demonstrates that there is no conflict and no legal issue presented.

Before discussing the conflict in the evidence it should be noted that petitioners' witness was a privately employed tax expert who had had only 15 days to analyze the assessments, i.e., from the first Monday in July, when the assessment roll is completed and open to inspection,[1] until July 22nd the date of the hearing. (R. 20.) He admitted that he had no personal knowledge of the current assessment methods of the assessor (R. 45, 46) and this admission was noted and commented upon by the California Supreme Court. (R. 107.) Respondents on the other hand are supported in their position by the testimony of the assessor (R. 93, 94), the assistant assessor (R. 50-63, 77-79) and the chief of the building division (R. 79-80), who are fulltime officers and employees and who testified from direct and personal knowledge of the facts.

Petitioners' tax expert contended that the assessor had used a different method with respect to multiple dwellings and single family dwellings, to wit, that he had used a straight line method of depreciation for the latter and a reducing balance method of depreciation for the former. (R. 37.) Much of his testimony was devoted to explaining the differences. (R. 38-41.) The assessor flatly denied the use of a different method of depreciation (R. 60, 61) and asserted that the

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[1]Sec. 616 Revenue & Taxation Code. On or before the first Monday in July, annually, the assessor shall complete the roll. . . . .

Sec. 1602 Revenue & Taxation Code. Until the equalization is finished, the local roll shall remain in the clerk's office for the inspection of all persons interested.

method used (set forth in detail in the printed record at page 50 to page 58) was used as to all properties. (R. 59, 61.)

Petitioners also contended and still contend that with respect to multiple dwellings the assessor predicated his market values on the then current prices but that with respect to single family dwellings he ignored current prices. The assessor testified that he took sales prices into consideration (R. 55-57) but only as one element of market value and not as the controlling factor. With respect to the subject properties he testified that he discounted current prices at least 50% (R. 69) because the restricted earning power brought about by O. P. A. regulations did not justify a higher market value. (R. 70.) With respect to single family dwellings he testified that in his opinion sales prices should be discounted as much as 60% because of the bonus paid by purchasers to obtain or retain shelter as a result of the housing shortage during and following the war. (R. 60) (It should be noted that the lien date involved in this proceeding is the first Monday in March, 1946, shortly after the termination of World War II, and consequently that the testimony involved in this proceedings must be viewed in the light of conditions as they existed at that time.)

Petitioners' own tax expert testified in this regard as follows:

"Q. . . . Can you tell us how much of the sales price consists of this premium or bonus paid for mere occupancy?" (R. 49.)

"A. I think that you might even say that it exceeds sound value by as much as 100%." (R. 50.)

Further demonstrating the abnormality of the sales of single family dwellings the evidence discloses that in 1940 43% of the six hundred fifty thousand dwellings were occupied by tenants (R. 36), whereas in 1946 only 15% to 20% were so occupied. (R. 69.) The difference of 23% to 28% is strong indication that a tremendous number of persons were forced to buy to avoid being dispossessed or to obtain or retain shelter.

The assessor testified that the increase in value of multiple dwellings occurred because of several factors, chief of which were (1) increased prices paid in a free market (such purchasers not being under compulsion to purchase in order to obtain shelter but purchasing for investment) (R. 61), and (2) increased income (resulting despite the O.P.A. from increased percentage of occupancy and lack of necessity to make repairs and alterations.) (R. 77-79, 31.) But as already noted, the second factor did not justify giving full weight to the first factor and hence even as to this class of property he discounted price at least 50%. (R. 69.)

While respondents contended that current prices were not controlling as a matter of law but were only

one factor in determining market value, the Supreme Court of California in the light of that evidence did not feel called upon to decide the issue as one of law but decided it adversely to petitioners on the facts presented. The California Supreme Court held that even in relation to prices there had been substantial equality of treatment as between multiple dwellings and single family dwellings, the court stating:

> " . . . However, as recited hereinabove, the witness Hartman testified that as to single-dwellings 'you had to deduct 60% of the sales price to get down to the market value' and that as to apartment house properties 'we would have at least twice the assessed value we have now' if sales data alone were taken as evidence of value. It thus appears that the board could properly find that the assessor fixed the market value in each of the two types of improvement at approximately 50 per cent of their sales price value and that there was no arbitrary inequality between them in this respect." (R. 111.)

Thus the Supreme Court of California, after reviewing all of the evidence (the entire record of the Board of Equalization being before it), held that there was sufficient and substantial evidence that the assessments were equalized not only with respect to market value but also with respect to sales price value.

The law was not decided adversely to petitioners but it was held that even conceding the law to be as

stated by petitioners there was substantial evidence to support the decision of the County Board of Equalization.

It was not necessary for the State Supreme Court on review by certiorari to go beyond that and the Supreme Court of California did not do so, although it might well have concluded that the great weight of the evidence supported the decision of the Board of Equalization.

The same is true of this review by certiorari. Petitioners again make the mistake that they made before the State court of relying upon the testimony most favorable to their position and ignoring the testimony which supports respondents' position.

Even in setting forth the facts most favorable to their position petitioners have not been entirely accurate. Thus on page 5 of their petition they assert that the assessor based his assessments on "unit cost" but the record cited (R. 25-27) shows clearly that the assessor used "unit values". This confusion of "cost" and "value" and "price" and "value" appears repeatedly in the petition.

Also, on page 8 of the petition it is asserted:

> "(5) That in respect to the 650,000 single unit dwellings in the county, the market price thereof had increased in and prior to 1946 as much as the market price of multiple unit dwellings. (R. 67, 68, 59, 60)."

In view of the way petitioners confuse "price" and "value" and in view of petitioners' assertion on page 15 of the petition that "market value" and "market price" are identical we must assume that petitioners by that statement intended to tell this Court that the record cited established that market values had increased equally as to both classes of property. An examination of the record cited (R. 67, 68) discloses that the testimony was that the "value" of single family dwellings had not changed at all.

Again, on page 8, petitioners assert that the assessor admitted that the price of single family dwellings had increased "in general" 150%. The statement (R. 60) was that "in many instances" the price exceeded value by "as much as" 150% (i.e., that as much as 60% of the sales price represented the bonus for occupancy).

Finally, on page 9 of the petition, petitioners set forth part of the assessor's testimony with respect to single family dwellings and compares it with part of the testimony of the assessor with respect to multiple dwellings. Petitioners' second quotation begins with the words "On the contrary". The implication seems to be that a contrary method of assessment was used. Actually there is some omitted testimony between the two quotations and the phrase "On the contrary" refers to a contention made by petitioners' own tax

expert. The assessor's statement was that, contrary to the assertion of petitioners' tax expert, the same method of assessment was used as to all classes of property. (R. 60, 61.)

B.

THE QUESTIONS SOUGHT TO BE RAISED

Petitioners pose two questions, one relating to the 14th Amendment to the Constitution of the United States, and the other relating to our State Constitution. Both questions are whether the taxing authorities may assess property of petitioners "upon a greater proportion of market value" than the property of other taxpayers.

With respect to that question our answer is the same as petitioners. Neither the assessor, the County Board of Equalization nor the State Supreme Court has contended that such could be done. The decision sought to be reviewed does not hold that it may be done. If those questions be the ones which petitioners wish to have decided, they have already been decided in favor of the petitioners by the State court decision sought to be reviewed and there is no issue before this Court.

What petitioners actually seek is to have this Court again weigh the evidence and decide the facts in their favor.

C.

CERTIORARI DOES NOT LIE TO REVIEW A DISPUTED QUESTION OF FACT

For the purpose of this point it is sufficient to point to the record (R. 50-58) wherein the assistant assessor testified to his general method of assessment which was in substance to consider all of the factors entering into market value and after ascertaining market value to take 50% thereof for assessment purposes, and to the record (R. 59, 61) wherein he testified that this method had been applied uniformly as to all property. Even if there were no other testimony supporting the assessments that alone is sufficient to support the decisions of the Board of Equalization and State Supreme Court.

On certiorari this High Court will not review the weight of the evidence before the State Court. (*Whitney v. People of the State of California,* 274 U. S. 357, 367, 71 L. Ed. 1095, 1102.)

The rule is that the decision of the State Court upon a question of fact cannot be made the subject of inquiry before this court. (*Grayson v. Harris,* 267 U. S. 352, 359, 69 L. Ed. 652, 656; *Dower v. Richards,* 151 U. S. 658, 668, 38 L. Ed. 305, 309; *Ward & Gow v. Krinsky,* 259 U. S. 502, 511, 66 L. Ed. 1033, 1036; *Baltimore and Ohio S. W. R. R. Co. v. Burtch,* 263 U. S. 540, 543, 68 L. Ed. 433, 436; *Telluride Power Trans-*

mission Co. v. Rio Grande W. R. Co., 175 U. S. 639, 645, 44 L. Ed 305, 308; *Carpenter v. Williams,* 9 Wall. 785, 786, 19 L. Ed. 827, 828, 11 C. J. 204.)

As was stated by this Court in *Portland R. L. & P. Co. v. Railroad Commission of Oregon,* 229 U. S. 397, at 412, 57 L. Ed. 1248, at 1259:

> " . . . In this case the facts found by the lower court and adopted in the supreme court are supported by competent testimony; and this court does not sit to retry issues of fact thus heard and determined by the properly constituted tribunals of the state having jurisdiction of the subject."

Similarly here the Board of Equalization tried the facts and found there was no discrimination. The State Supreme Court reviewed all of the evidence and held that there was sufficient evidence to support the conclusion not only that the values were equalized with respect to market value but also with respect to sales prices. The decision being supported by competent evidence (and as we believe by the great weight of the evidence) this High Court should not sit to retry the facts.

D.

UNDER BOTH THE CALIFORNIA AND FEDERAL DECISIONS MARKET VALUE FOR TAX PURPOSES IS THE SAME AS MARKET VALUE FOR OTHER PURPOSES.

Petitioners concede (Pet. pp., 17-18) that:

> "The California courts have held in numerous decisions that, for assessment and taxation purposes, the terms 'value' and 'full cash value', as used in the Constitution mean 'market value.' "

Petitioners also concede (Pet. pp., 12, 13) that this Court, in *San Francisco Natl. Bank v. Dodge,* 197 U. S. 70, 49 L. Ed. 669, has held, with reference to California property and tax statutes, that market value is the criterion for assessment purposes.

Petitioners are confused by the definition in the California statute (Sec. 110 Revenue & Taxation Code) that "value", "full cash value" and "cash value" mean "the amount at which property would be taken in payment of a just debt from a solvent debtor."

Petitioners conclude that that means that "price" alone is to be the criterion of market value. The courts of California have not so held.

In the first place our courts have marked the distinction between the word "value" as used alone in a statute and the word when qualified as in the phrase "cash value." The qualifying word "cash" has been held to refer to a lower value. *Orpheum Circuit, Inc., v. Los Angeles,* 12 Cal. App. (2d) 257.

Such lower value by administrative practice, judicial decisions and legislative recognition has come to mean 50% of market value. Thus, in *Orpheum Circuit Inc., v. Los Angeles,* 12 Cal. App. (2d) 257, at 261, it is stated:

> " . . . The practice of the Assessor of Los Angeles County and of other officials of Los Angeles dealing with the assessing of property for the purposes of taxation within the City of Los Angeles, of determining the actual cash value thereof by first determining the fair market value of such taxable property and by using an amount not exceeding fifty per centum of such fair market value as determined by said Assessor, is hereby confirmed and ratified."

See also: *Rittersbacher v. Board of Supervisors,* 220 Cal. 535, at 543-4, wherein the court said:

> " . . . In arriving at the value of all property for the purposes of assessment the assessor is guided generally by Section 3617 of the Political Code which defines the term 'value' as 'the amount at which the property would be taken in payment of a just debt from a solvent debtor.' This value is expressed in Section 3627 of the Political Code as the 'full cash value' for purposes of assessment. It is the assessor's recognized duty to see that the valuation placed on various kinds of property shall be in proportion to the worth of such properties. If it is proportional and all are treated alike, no one contends that the taxpayers must be charged a

full one hundred per cent, for such is not required by the law."

Also: *Hammond Lumber Co. v. County of Los Angeles,* 104 Cal. App. 235, at page 242:

" . . . This value was then multiplied by the number of acres, and in accordance with the usual practice in assessing property in general, one-half of the amount so arrived at was adopted as the assessed value of the leasehold interest."

and at page 244:

" . . . So by a process which need not be followed here with particularity, the witness figured the full market value of the leasehold interest at $409,313, one-half of which amount, or roughly $204,650, was taken as the 'full cash value' for taxation purposes."

Also: *Bandini Estate Co. v. County of Los Angeles,* 28 Cal. App (2d) 224, at 232:

" . . . It was stipulated that it was the general method of assessment in Los Angeles County in 1931 to assess parcels of land at not to exceed 50 per cent of their market value."

Also: *Eastern-Columbia, Inc., v. County of Los Angeles,* 61 Cal. App. (2d) 734, at 739:

"Upon this appeal it is conceded by all parties, as was found by the trial court, that the assessor was required to assess both lands and improvements in 1941 at 50 per cent of their respective market values."

The practice of recognizing "cash value" as being 50% of market value again appears in the present case. (R. 108.)

Also, the California Legislature has recognized that assessed values are 50% of market value. Section 2983 of the Streets & Highways Code reads as follows:

> "To determine the true value of property for this division, the assessed value of such property as shown on the last equalized assessment roll of the county in which such property is situated, available on the date the report is commenced, shall be multiplied by two and the result expressed in dollars shall be the true value of such property."

Thus the term "cash value" and the definition thereof have come to mean in California no more than that it is equivalent to 50% of market value. Our courts have not let the word "cash" or the phrase "amount at which property would be taken in payment of a just debt" qualify the meaning of market value as a standard but only to justify the use of 50% thereof for assessment purposes. Petitioners in stressing the word and phrase so as to give a narrow meaning to the concept of market value and so as to make "price" of other properties the one controlling factor finds no support in California decisions.

This Court has defined market value for assessment purposes similar to the California Courts. In the case

of *Great Northern R. Co. v. Weeks,* 297 U. S. 135, at 137, 80 L. Ed. 532, at 536 this Court stated:

> "The principles governing the ascertainment of value for the purposes of taxation, are the same as those that control in condemnation cases, confiscation cases and generally in controversies involving the ascertainment of just compensation. *West v. Chesapeake & P. Telegraph Co.,* 295 U. S. 662, 671, 79 L. Ed. 1640, 1646, 55 S. Ct. 894.
>
> In determining the amount of the assessment the board was not bound by any formula, rule or method, but for guidance to right judgment it was free to consider all pertinent facts, estimates and forecasts and to give to them such weight as reasonably they might be deemed to have. Courts decline to disturb assessments for taxation unless shown clearly to transgress reasonable limits. Over-valuation is not of itself sufficient to warrant injunction against any part of the taxes based on the challenged assessment; mere error of judgment is not enough; there must be something that in legal effect is the equivalent of intention or fraudulent purpose to overvalue the property and so to set at naught fundamental principles that safeguard the taxpayers' rights and property. *Rowley v. Chicago & N. W. R. Co.,* 293 U. S. 102, 109-111, 79 L. Ed. 222, 226-228, 55 S. Ct. 55. The assessment is presumed to have been rightly made on the basis of actual value. Its validity must be tested upon consideration of the facts established by the evidence and of those of which judicial notice may be taken."

While that case did not involve alleged discrimination but rather assessed values in excess of market values (a problem not involved here) the definition of what constitutes value for taxation purposes is equally applicable.

What petitioners are really trying to urge is that even though market value be the standard still under our statutory definition of "cash value" the assessor must limit the factors that he considers in arriving at market value to the one element of price. However, California has long since held that such statutory definition requires no such result. In the case of *Utah Const. Co. v. Richardson,* 187 Cal. 649, at 652-3, the California Supreme Court held that the legislature had not fixed the "manner" or "mode" of ascertaining cash value, that the "assessors must be guided by the general principles which everywhere determine the valuation of property, independently of statutory rules" and that "it was permissible for the legislature to commit to the Board of Equalization the duty of selecting the mode of ascertaining the cash value."

The latter decision was quoted with approval by the California Supreme Court in the very recent decision of *Kaiser Co., Inc., v. Reid,* 30 A. C. 614, (Advanced California Reports) at page 626, 184 Pac. 2d ..... The Supreme Court there prefaced its quotation with the statement:

> " . . . The Revenue and Taxation Code requires that 'all taxable property shall be assessed at its full cash value' (Sec. 401), which means 'the amount at which property would be taken in payment of a just debt from a solvent debtor' (Sec. 110). The state Constitution authorizes local boards of equalization 'to equalize the assessment of the property contained in (the) assessment-roll, and to make the assessment conform to the true value in money of the property contained in said roll. . . . ' (Art. XIII, Sec. 9.) But the precise method to use in calculating 'full cash value' is not prescribed by law."

Thus the statutory definitions relied upon by petitioners have not been construed by our California courts as limiting the mode or method of arriving at assessed value to the single consideration of price. So long as assessed values are in proportion to the customary accepted concept of market value the California statutes are satisfied. Whether that construction of the statutory definition is right or wrong presents no Federal question. In any event it conforms to the Federal definition contained in *Great Northern R. Co., v. Weeks*, 297 U. S. 135, 80 L. Ed. 532.

The assessor did arrive at market value and took one-half thereof for assessment purposes. He did take the prices of other properties into consideration (R. 55-57), as we concede of course should be done, but he did not give such sales prices any greater weight than the facts and circumstances surrounding such sales

prices indicated they should. This was done uniformly as to all properties. (R. 59, 61.) Thus under the accepted definition of market value there has been uniformity.

It should be again emphasized, however, that even if this traditional and accepted definition is wrong and "price" is the one controlling factor, still the California Supreme Court has found:

> " . . . However, as recited hereinabove, the witness Hartman testified that as to single-dwellings 'you had to deduct 60% of the sales price to get down to the market value' and that as to apartment house properties 'we would have at least twice the assessed value we have now' if sales data alone were taken as evidence of value. It thus appears that the board could properly find that the assessor fixed the market value in each of the two types of improvement at approximately 50 per cent of their sales price value and that there was no arbitrary inequality between them in this respect." (R. 111).

And petitioners consequently have not been damaged. Since the decision can be supported on that non-Federal factual ground, actually this whole point is merely cumulative and not essential.

CONCLUSION

Neither the assessor, the Board of Equalization nor the Supreme Court of California has questioned the necessity of assessing all property at the same level in relation to market value. No point of law has been decided by the California courts contrary to the decisions of this Court. The case actually turned upon a question of fact.

We have, however, attempted to go further in this brief and meet the petitioners' case upon their own grounds. Even so, we find not only that the courts do not subscribe to their limited concept of market value but also even if their concept be correct the assessments were substantially equalized on the basis of "price", as well as market value.

Respectfully submitted,

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